THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15755 of 2006

25.8.2006

Between:

V.Gopal Reddy, S/o.late Narasimhareddy

… Petitioner

AND

The Mandal Revenue Officer, Pedda Mandadi Mandal
Mahabubnagar District And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15755 of 2006

ORDER:

The petitioner claims to be pattadar of land admeasuring Acs.8.07 guntas in survey No.81 situated at Chinna Mandadi Village of Pedda Mandadi Mandal in Mahabubnagar District. One Harijan Karrenna, husband of second respondent and father of respondents 3 to 8 herein, obtained ownership certificate in respect of the said land under Section 38E of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (the Act, for brevity) from Sub-Collector, Gadwal on 28.4.1990. The petitioner then preferred appeal before the Joint Collector, Mahabubnagar District, under Section 91 of the Act, which was dismissed by order dated 15.1.1998, against which, the petitioner filed C.R.P.No.802 of 1992 before this Court, which was also dismissed. Therefore, ownership certificate was issued to Karrenna on 15.1.1998. Thereafter, Harijan Karrenna filed an application before the Mandal Revenue Officer, Pedda Mandadi (MRO), for restoration of the land, pursuant to which, the first respondent issued orders directing the Revenue Inspector to deliver possession. Again, the petitioner preferred appeal before the Joint Collector, who set aside the order of the first respondent on 21.9.1998 and directed the first respondent to consider the matter afresh. The petitioner again filed civil revision petition and the same was also dismissed. When C.R.P.No.5539 of 1998 filed against the order of the Joint Collector dated 21.9.1998 was pending before this Court, Harijan Karrenna died and his legal heirs, respondents 2 to 8 herein, came on record. As noticed, C.R.P.No.5539 of 1998 was dismissed on 11.2.2005. Thereafter, the MRO conducted enquiry, issued notice to the petitioner and passed orders on 05.7.2005 for restoration of the land to respondents 2 to 8. The possession of the land was delivered to respondents 2 to 8 on 12.7.2005 under cover of panchanama. Assailing the order/memo of the first respondent dated 05.7.2005, the present writ petition is filed.

Learned Counsel for the petitioner strenuously contends that in the absence of an enquiry into the question of legal heirs of protected tenant, the jurisdiction under Section 32 of the Act for restoration of

possession cannot be entertained by the MRO. He also submits that no proper opportunity was given to the petitioner while coming to the conclusion that the respondents 2 to 8 are legal heirs of the deceased-protected tenant. He also submits that Harijan Karrenna orally surrendered tenancy rights in 1954 and though this question was raised before the authorities, that was not considered and the authorities misdirected themselves in ordering possession to the respondents 2 to 8.

After hearing the learned Counsel for the petitioner and learned Assistant Government Pleader for Revenue (General), this Court is not able to accept any of the submissions made by the learned Counsel for the petitioner. The submission that Harijan Karrenna surrendered tenancy rights prior to 1954 is to be recorded for the purpose of rejection. No material is placed before this Court in support of the contention that the petitioner raised such a ground before the original authority or appellate authority. Admittedly, the certificate issued in favour of the protected tenant in 1990 has become final and the petitioner was unsuccessful before this Court in C.R.P.No.5539 of 1998 as well. Having failed to agitate the matter earlier, he cannot now be permitted to raise such a ground. Even otherwise, the Act contemplates prior approval or permission of the MRO for surrendering the tenancy rights (see Sect.19). In the absence of any such approval for surrender of tenancy rights, the alleged oral surrender by the protected tenant does not bind either the protected tenant or the persons claiming through him.

At the stage of enquiry under Section 38E of the Act in 1990 and in the enquiry in 1998 before the Revenue Divisional Officer (RDO), the petitioner was given sufficient opportunity and, therefore, the submission that no opportunity is given to the petitioner is misconceived. Lastly, the protected tenant died while the C.R.P. NO.5539 of 1998 was pending. Respondents 2 to 8, as seen from the order in C.M.P.No.7343 of 2003 dated 11.2.2005, were impleaded as legal representatives of Harijan Karrenna. At that stage, the petitioner did not object and, therefore, there is no infirmity in the MRO or RDO ordering restoration of the land to respondents 2 to 8 treating them as legal heirs of the protected tenant. Indeed, when there is no dispute among the legal heirs, in a case for restoration of possession either under Section 32 or 38E(2) of the Act, if the protected tenant dies pending the proceedings, possession can always be restored to the legal heirs of the protected tenant. The submission that the MRO and

RDO ought to have conducted enquiry about respondents 2 to 8 cannot be accepted.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

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(**V.V.S.RAO,J**)

August 25, 2006.
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